



CLEPA
European Association of
Automotive Suppliers

CLEPA IMDS Suppliers' Group Meeting

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**Terms of Use (ToU) Version 3.0
The main issues**

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Terms of Use

IMDS - Mozilla Firefox
https://www.mdssystem.com/checkBrowser.do?forceRefresh=1238746111528&lang=EN

MATERIAL DATA SYSTEM

Log on

EDS an HP company **Get more information...**

Managing material data sheets for the automotive industry

The International Material Data System (IMDS) enables you to create material data sheets on your computer in a secure and comfortable manner. The system offers a broad range of innovative capacities being updated continuously.

For further information please contact the [IMDS Service Center](#).
Here you can download the up-to-date IMDS user manual as [PDF](#) or as [ZIP](#).
Here you can download a walk through on [creating a material in IMDS](#) and [creating a component in IMDS](#).

[Important user information](#)

NEWS

03/05/2009 Preliminary information on IMDS Release 7.0
For the preliminary IMDS Release Notes 7.0 please check our [IMDS News page](#).

10/30/2008 IMDS Release 6.1
[IMDS Release 6.1](#) in production since October 30th, 2008. Under FAQ - General Information a presentation about IMDS Rel. 6.1 has been posted.

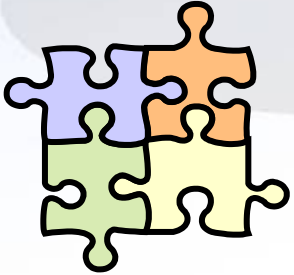
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www.mdssystem.com Disabled



Status of the Discussions

- Long discussions between CLEPA, EDS IMDS Steering Committee in the last months on new version (approx. 10 audios)
- Strong support by several lawyers
- These talks were concluded on 13 February 2009
- Audio with AIAG on 6 April – Agreed!
- Awaiting JAPIA's approval



→ Enter into force on 4 June

→ Acceptable compromise reached

→ Suppliers interests have been regarded



Relevance of Terms of Use for IMDS Users



The Terms of Use (former name: "Use Conditions")
are the legal basis for IMDS usage



Each IMDS user **MUST accept** Terms of Use by
mouse click

- *when logging in IMDS system the first time*
- *when ToU have been changed*



Details of the new ToU

- **The main issues of the ToU 3.0 were:**
 - Three-party-relationship vs. Two-party-relationship
 - USER Account
 - Client Manager
 - Data input and maintenance
 - Scope of use of IMDS-Data (Definition)
 - Use of the IMDS data for non-IMDS-OEMs
 - Modification
 - Responsibility of the Data Providing USER for the data provided into IMDS (Indemnification, Disclaimer)



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Three-party-relationship vs. Two-party-relationship

- Regarding the previous ToU, the understanding was that it governed all relationships of:
 - (1) EDS, (2) Data Providing User and (3) Data Receiving User
- **Present status:**
- **Para 1.** - The new understanding between all parties is, that the ToU shall **only govern** the relationship between the Single USER (DPU & DRU) and EDS
 - There shall be NO contractual rights and obligations , created by these ToU between the Data Providing User and Data Receiving User



Three-party-relationship vs. Two-party-relationship

Explanations:

-  The Terms of Use **is** a contract between you (the Single USER) and EDS
-  The Terms of Use **is NOT** a contract between you and the customer to whom you send info.



Details of the new ToU

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Details of the new ToU

- **Para 3 – USER Account:**
 - Liability between Single USER and EDS
 - “The USER is exclusively responsible for maintaining the confidentiality of her/his USER ID, PW ... and for all activities occurring under the USER’s account, EXCEPT for activities of any third party outside the USER’s sphere, NOT attributable to him/her. In this instance.”



Details of the new ToU

- **Para 3 – USER Account:**
 - USER accepts liability towards EDS if his/her ID/PW has been knowingly used by a 3rd party (or by self) and loss has been suffered
 - “EDS will NOT be liable for any loss which the USER may suffer, due to sb else using the USER’s Acc./PW, either with or without the USER’s knowledge”

NB – Para 16 – Limitation on liability



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Details of the new ToU

- **Para 4 – Client Manager:**
 - Each USER shall appoint a responsible Client Manager – single point of contact
 - Replacement of the Client Manager



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Details of the new ToU

- **Para 5 – Data Input and Data maintenance:**
 - “Any data provided into IMDS is based on each DPU’s best reasonable knowledge, including the DPU’s research and experiences. The data corresponds to each DPU’s present level of knowledge.”
 - “EDS has no responsibility for the data content entered by a USER.”
 - EDS will take adequate measures to ensure that the data provided into IMDS can only be completed, changed, deleted or modified by the respective Data Providing USER.”



Details of the new ToU

- **The main issues of the ToU 3.0 were:**
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Scope of use of IMDS-Data (Definition)

- **Para 6** - Permitted use within the current version of the ToU:
 - Evaluations for the purposes of ELV Directive 2000/53/EC and related regulations”
- **Present status:**
- **Permitted use within the present ToU:**
 - Stats evaluations of material composition of components and vehicles, recyclability evaluations
 - Research studies for the purposes listed in „GADSL (including worldwide ELV directives and relevant REACH SVHC listed in the candidate list), RRR and related regulations“

Scope of use of IMDS-Data (Definition)

Explanations:

- The data you submit by IMDS to your customer **must ONLY be used** to ensure compliance with environmental legislation
- **Uses NOT permitted:**
 - The data especially **must NOT** be used to
 - recalculate prices
 - to follow-up quality issues

Scope of use of IMDS-Data (Definition)

- Not a complete list of uses:
“any further use and purpose needs to be approved by DP and DR USERS in advance.”
- No extension of rights or obligations, unless by separate agreement
- Data may be marked as “confidential” or for “internal use”, specifically designated Data Receiving END-USER
- “The DRU however, remains entitled to forward the received data to another USER if and to the extent such USER has a need to know such data with regard to the corresponding goods and services, supplied by the first DRU to the latter.”



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Use of IMDS data for non-IMDS OEMs

- **Para 7 c - Initial EDS proposal:**
 - “The USER shall not use the IMDS for the collection and provision of data for car manufacturers which are NOT part of the IMDS group of car manufacturers”
- CLEPA insisted on the use of IMDS data for also car manufacturers, not part of the IMDS group
- **Present status:**
- No restrictions regarding the collection and use of data for car manufacturers which are not part of the IMDS group

Use of IMDS data for non-IMDS OEMs

- Best efforts Clause“ to attempt to persuade USER´ s customers and sub-suppliers to receive, provide data by IMDS, for quality and efficiency
- We understand and support efforts of SC to further develop IMDS into a global unique system
- In every day practice, we cannot prevent to collect at least some data also for these customers



Agreement:

“The USER shall not be entitled to make the IMDS data available to the public or transfer the IMDS data to any third party outside the automotive industry for such third party’s commercial interest.

The USER shall to best effort attempt to persuade his customers and sub-suppliers to receive and provide data by IMDS for reasons of quality and efficiency.”

- Please support this position and influence your customers and suppliers accordingly



Para 7 (d) Training / Workshops

- Added: “IMDS shall be used for the creation and exchange of data between the supply chain partners only.”
- The usage of the IMDS productive server system is explicitly prohibited for commercial trainings and commercial workshops ... exceptions are to be agreed with EDS.”
- Colleagues can be shown how to work with IMDS, in order to check or create data



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Modification of the ToU

CLEPA:

- There shall be no possibility of unilateral modifications of the ToU by EDS

Present status:

- “In case of system-related security issues or other severe reasons, e.g. limited accessibility, limited performance, should arise EDS may, in order to prevent abusive use of and/or to protect the proper functionality and availability of IMDS, modify the Terms of Use for this purpose”
- “Prior to implementing such modifications EDS will consult with the major User organizations, disclose to them the reasons for such changes and discuss the necessity of changes to the Terms of Use”
- In urgent cases (functionality, availability), EDS can modify



Details of the new ToU

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Responsibility of the Data Providing User

➤ **Para 17 – Indemnification**

- The accuracy and adequacy of data is under the exclusive control of the DPU

➤ **Para 18 – Disclaimer for Electronic Data Transfer**

- “Neither EDS nor DPU warrant or represent that the data received by the DRU is accurate, complete, correctly sequenced, without typo errors, reliable or timely, or that the data will be free of errors or ... viruses.” **Para 5**

➤ **Present status:**

- NO obligations, warranties or liabilities of the Data Providing User towards the Data Receiving User
- Reflects two-party-relationship between Users and EDS

➤ **There is no provision regulating the direct relationship between Data Receiving User and Data Providing User**



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**Thank you for
your attention!**

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